

From: Udi Knaani <Udi@fwmk-law.co.il>

To: ehbarak1@gmail.com

CC:

Date: Fri, 3/11/2016 12:19:37 AM

Subject: Fwd: some business issues in the Agreement, thanks!

אהוד שלום,

ראה למטה את המכתב/מייל שקיבל בנעד, וכן את התשובות שברצונו להשיב (שנוסחו על ידי עורך דינו).
בנעד ביקש לדעת האם לדעתך/רצונך כדי שאתה תשוחח עם הסינים על הנקודות הבעייתיות (בטרם משלוח המייל) או שאתה חושב שכדי שבנעד ישלח את תגובתו ואתה תנסה לעזור מאוחר יותר במידת הצורך.
כפי שתוכל לראות מהנוסח שהוא הכין כתשובה, הוא מאוד לא אהב את המייל מהסינים.
להתראות,
אוּדִי

נשלח מה-iPhone שלי

תחילת ההודעה שהועברה:

מאת: Eli Barasch <elib@gkh-law.com>

19:17:49 בשעה 2016 במרץ 10 GMT+2 **תאריך:**

אל: Benad Goldwasser <benadgold@gmail.com>

עותק: Udi Knaani <Udi@fwmk-law.co.il>

נושא: some business issues in the Agreement, thanks! **בעניין**

Hi Benad,

Further to our call, see below:

From: Benad Goldwasser [<mailto:benadgold@gmail.com>]
Sent: Thursday, March 10, 2016 5:07 PM
To: Eli Barasch <elib@gkh-law.com>
Cc: Udi Knaani <Udi@fwmk-law.co.il>
Subject: Fwd: some business issues in the Agreement, thanks!

Dear Eli

Please review the letter I just received from the Chinese. After you read it please give me a call.

Benad

Begin forwarded message:

From: 姜韵 <jiangyun@cn-sail.com>
Subject: some business issues in the Agreement, thanks!
Date: March 10, 2016 3:50:45 PM GMT+02:00
To: "Benad Goldwasser" <benadgold@gmail.com>
Cc: qlf曲列 <qlf@nac-capital.com>

Dear Prof. Goldwasser,

Sorry for the delay in replying the agreement issues..

Thank you for great efforts from you and Mr. Eli Barasch in our collaboration!
However, we have still found that there are some business issues (both in the side letter and the Advisory Agreement) we would like to have your comments or confirmation, which are listed as follows. Later, Kenneth will send you the revised version of Agreement and Side Letter, including the modification in legal issues.

By the way, Dr. Qu will need to take the business trip to several other places starting from early next week. It is unfortunate that he will not be able to attend the conference call next Monday (3/14). The other members of the team, including Mr. Zhu Yin, Daniel and I, are expecting to communicate with you about the portfolios, if possible and if it is convenient for you.

Thanks again!

Best Regards,
Yun

ONE. Business Issues in Side Letter:

1. In "I. Ownership Structure of EBG":

SAIL would like to know whether there is any change in the respective share ratio of Mr. Barak and Prof. Goldwasser in EBG. (We recall that, we have been informed Mr. Barak will own about 20% shares of EBG; and Prof. Goldwasser will have 35-40% shares of EBG.)

A: No Change

2. Regarding the Obligations (i.e., non-compete, non-conflict)

Quoted: “the side letter shall automatically terminate and be of no further force and effect immediately upon the termination of the Advisory Services Agreement”.

Comments: However, we suggest that, since it is possible that SAIL Group’s investment in Israel may not have yet exited when and if the agreement is terminated, we believe that it is reasonable to have Mr. Barak and Prof. Goldwasser continue to comply with their obligations with the respect to the existing deals, such as non-compete and non-conflict, in order to preserve the value of the existing SAIL portfolios in Israel, which also benefits the Founders because EBG does have a stake in the existing deals post-termination of the advisory agreement.

A: agree not to compete with remaining Israeli portfolio companies.

TWO. Business Issues in Advisory Services Agreement:

1. In “1.4 Acquisition Model”

Quoted: Except for the acquisition of majority stake with control of target companies introduced by EBG, it is also included “(ii) SAIL Group and/or any other entities acquires all or substantially all of the IP rights of Target Companies introduced by EBG”.

Comments: However, we do have other ideas:

(1) It is the acquisition of shares of Israeli companies to be applicable to this model. We believe that EBG and we have never mentioned about the acquisition of IPs.

A: S. 4.3 of the MOU applies to acquisition of a company "or its technology".

(2) If another company except SAIL Group asks EBG’s service in acquisition of the stake or IPs of Israeli companies, it is classified in the “1.5 Other Model”. EBG will get the consideration case by case after discussing with the other Chinese company.

A: Ok.

2. In “4.1 Advisory Fees” (b) Payment of the Advisory Fees:

After internal discussion in SAIL, we accept EBG’s proposal of spreading the formation costs over three quarters in Year 1. That is: The respective Advisory Fee for Q2 / Q3 / Q4 is to be \$569,444. (\$625,000 - \$166,667 / 3)

A: Thank you.

3. In “4.1 Advisory Fees” (b) payment of Annual Budget:

(1) Quoted: Advisory Fee for Q2-Q4, payable on or before the beginning of the quarter; and also in 4.1 Advisory Fees (d).

Comments: However, we would like the deadline to be “within 10 business days after the beginning of the quarter”. Since the change of the offshore payment regulation in China, we are facing more restrict approval procedures and longer process to make the cross-border payments, which is not in our control... We would like to have more time for preparation and more flexibility. Also, SAIL Fund will receive the management fee from LPs within the 10 business days after the beginning of every 6 months.

A: Israeli law requires that EBG pay salaries within 9 calendar days of the beginning of the month so we need to be paid within 8 days.

(2) Quoted: i. Formation cost for Year 1: \$166,667 will be paid as soon as possible after signing and in any event no later than 14 calendar days from the Effective Date;

Comments: However, we would like to specify “no later than one month from the Effective Day”. The reason is the same as above, for we are facing more restrict rules and approval process, which is not in our control.

A: OK

(3) Quoted: Advisory Fee for Q1: \$625,000, payable as soon as possible, in any event no later than 45 calendar days from the Effective Date.

Comments: However, we would like to specify “no later than 60 days from the Effective Day”. The reason is the same as above...

A: Not acceptable. If the \$166k can be paid within 30 days, there's no reason for this not to be paid within 30 days also.

4. In “4.1 Advisory Fees” (b) payment of Annual Budget:

Quoted: In ii. Advisory Fee for Q1: (it being agreed and understood that EBG shall not be required to begin providing services and shall not engage the Project Team prior to receipt of this payment);

Comment: We accept EBG's request as above. Meanwhile, we also propose the followings:

In the period between signing the Agreement (Effective Date) and EBG's receipt of Q1 advisory fee, because EBG will not start to work, the Exclusivity will not apply to SAIL Group. That is, during this period, SAIL Group can contact, or directly invest in Israeli **healthcare** companies by itself or through other channels. After EBG begins to provide services, SAIL Group will comply with the Exclusivity in 5.2 of the Agreement (such as, EBG shall be SAIL Group's exclusive representative in Israel in healthcare, life science,.... Sectors during the term...)

A: At SAIL's request, I began reviewing companies and 4 months ago and I will continue to do so before we get paid but I cannot commit to pay salaries and rent before the money arrives. In light of the fact that I've been working on this for free for many months already, I feel very hurt and insulted by this proposal.

5. In “4.1 Advisory Fees” (c) adjustment of Annual Budget:

(1) We believe that, in previous meetings, both EBG and we have agreed the two parties will review EBG's performance in Year 1. If there is any adjustment of the annual budget, there will probably be the reductions of both expenses for Subcontractors, and Travel & Entertainment Expenses. However, Travel & Entertainment Expenses is deleted from the updated Agreement..... We would like to add Travel & Entertainment Expenses back.

A: I will again point out that this has nothing to do with performance. If our performance constitutes a breach of the agreement, SAIL Fund has contractual remedies including terminating the agreement. What this provision is supposed to cover is where there are fewer investments/DD projects and therefore we didn't spend the money budgeted for subcontractors. In that case we can agree to use that money in the following year since it wasn't already used. As to Travel, SAIL has asked that we travel regularly to China. If we do so there's no room to deduct travel expenses from the budget.

(2) At the end of year 1, SAIL Group and EBG will review EBG's performance according to Section 3 in the Agreement (not only the standards in Section 3.1 (b) and 3.1 (b)iii, but also including other affairs).

a. If SAIL Group thinks it is necessary to adjust the budget, then the two parties will have a discussion of the possible reduction in both expenses of Subcontractors and Travel & Entertainment Fees.

A: Not acceptable – see above. This isn't a performance review. If we didn't incur DD expenses in the prior year the following year's budget can be credited with the unused amount.

b. If the two parties cannot reach an agreement on the budget of Year 2, then after a certain timeline (such as 30 days before the end of Year 1, as suggested), SAIL Group will propose that, the budget for Year 2 to be \$2 M.

c. If still, no agreement can be reached, then, the parties will consider about the termination of the co-operation.

A: b and c are unacceptable. The MOU provided for a firm 3 year commitment. We already added a mechanism which allows in certain circumstances for a revision to the budget after year 2 which means that the 3rd year is not 100% guaranteed. You now want the ability to turn it into a

one year agreement. That's completely unacceptable; I'm hiring senior people who will be leaving good jobs to join us for this project and I can't do that if there's a possibility that the agreement's only for one year.

6. In "Exhibit II", about the materials that EBG is to provide SAIL Group:

(1) Please kindly try to provide SAIL Group the complete key materials of the target companies, for the efficiency and accuracy of the portfolio assessment and investment decision. If some Key materials of the target companies are absent in one recommendation which will affect the investment decision, then, this recommendation may not count.

A: I don't understand what you want. SAIL provided the list of materials, is there something you want to add?

(2) Just for only a few very "hot" & very well-known projects, SAIL Group can accept that EBG is not able to provide one or some materials at the moment, if EBG cannot get the complete materials at one time and SAIL Group has also heard about the hot project.

A: I don't understand the comment. Most of the information about a company will be provided by that company and we can't take responsibility for its accuracy or completeness. Ultimately, if SAIL Fund isn't satisfied with the information it can choose not to make an investment or to condition the investment on receiving additional information.

(3) Regarding the materials from the target companies, SAIL Group will also ask for EBG's comments or advice on them. And, please tell SAIL Group whether EBG think there are some misleading, missing or incorrect information.

A: Obviously EBG will evaluate the information to the best of its abilities and if we believe there's something wrong with it we will let SAIL Fund know.

7. In "Exhibit IV", Initial Budget:

We think there is some typo in Subcontractors, especially the numbers in Per Year and Per Month are not consistent.

A: the budget should revert to "Financial" appearing in the same line as Legal DD. The line item for Accountant should be \$7.5k per DD.

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